

## APPENDIX A

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**Explanation on the format and use of Appendix A – Public Comments and Bureau of Reclamation Responses on the Draft Environmental Assessment for the Newlands Project Water Rights Retirement Program**

A total of 10 letters or responses were received by the Bureau of Reclamation regarding the Draft Environmental Assessment for the Newlands Project Water Rights Retirement Program, dated June 2010.

Pages 1-13 of Appendix A contain a table, numbering the public comments.

This table will be posted on Reclamation's website at:

[http://www.usbr.gov/mp/nepa/nepa\\_projdetails.cfm?Project\\_ID=5824](http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=5824)

On the website, the table is interactive with the viewer. Click on each highlighted comment number, and Reclamation's response to the comment will appear in a box.

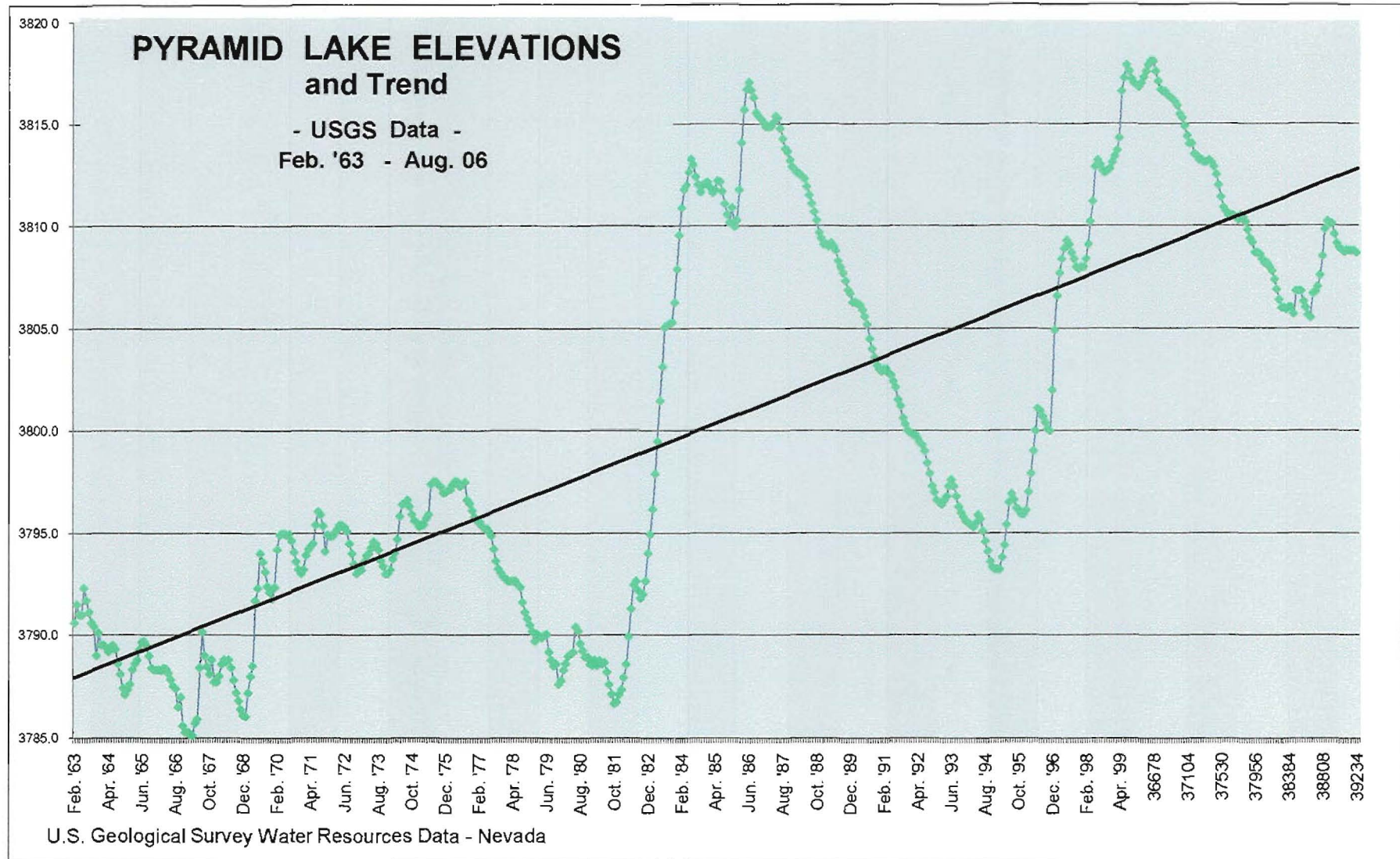
Page 4 is a graph produced by Reclamation in response to the graph on page 3 submitted under public comment #2-6, for ease of comparison.

Pages 14 – 23 of Appendix A contain Reclamation's responses to the public comments using the numbers assigned in the table on pages 1-13.

Following page 23 is a copy of all letters / responses received on the Draft Environmental Assessment.

<b>No.</b>	<b>Name</b>	<b>Comment</b>
1	John Mosley Pyramid Lake Paiute Tribe	<b>[#1-1.]</b> In regards to the FONSI, LO-10-01, I would like to make a comment. This program is important to the Pyramid Lake Paiute Tribe and the retirement of water rights that will increase flows to Pyramid Lake is of utmost importance to the lake, not only for the survival of the endangered Cui-ui and threatened Lahontan Cutthroat Trout, but also for the benefit of water quality in the Truckee River and the restoration of the woodland resources near adjacent to the river. This is a great program and we look forward to its continuance.
2	Norman Saake	Thank you for sending me a copy of the Bureau of Reclamation's Draft of the Newlands Project Water Rights Retirement Program and for allowing me to comment on the EA. Unfortunately, I did not get of AB. 380 in 1999 and did not have a chance to comment on that bill or the EA. Consequently I can only comment on the current EA as prepared by the Bureau.
		<b>[#2-1 Other water rights.]</b> I do have a couple of questions and comments I would like to express. A percentage of the water rights purchased by the Fish and Wildlife Service (Service), State of Nevada (State), and Nevada Waterfowl Association (NWA) were deemed inactive and not transferable to the Lahontan Valley Wetlands (LVW). Could these or have they been incorporated into this action and be credited to the 6,500 acre total?
		<b>[#2-2 Lahontan Valley wetlands.]</b> I know that some water rights purchased under AB 308 were active water rights and were not transferred to the wetlands. Under this latest proposed action, could any active water rights acquired be transferred to the wetlands to help meet the goal of 75,000 acre-feet. Unless this is done, there would be two competing government water-right purchasing actions that impact each other.
		<b>[#2-3.]</b> Since one of the main aims of this action and AB 380 were to retire water rights from the Newlands Project (Project) and to ensure the perpetuation of Pyramid Lake and to reduce litigation over Project water rights, the tribe should be required to cease water right transfer protests. This is extremely important for those transfers to the LVW for reasons I will elaborate in the following paragraph. <b>[#2-4 Lahontan Valley wetlands.]</b> Both the State and the State have expended many millions of dollars in an attempt protect the LVW, and it is not reasonable for the Pyramid Lake Tribe (Tribe), who is also receiving millions of taxpayer dollars for water right purchases, to take this action that impacts the viability of the wetland's water-right acquisition program. <b>[#2-5.]</b> In 2007, the State and NWA successfully pursued a full-duty water right transfer through the Sate Engineer's Office. The transfer was protested by both the federal government on behalf of the Tribe and by the Tribe. The State and NWA won the transfer case on all points and was granted the full-duty transfer to the wetlands, but the Tribe filed an appeal in District court. So far the District court has not made a ruling on this case.
		<b>[#2-5 continued.]</b> The amount of water involved in this litigation for a full-duty transfer to the LVW is only 0.51 acre-feet per acre (AF/A), it has significant value to the wetlands and has almost no impact to Pyramid Lake. In terms of real value to the wetlands, the 0.51 AF/A calculates to an additional 25 percent additional water. This is because, prior to the transfer of water from irrigated farm lands, the wetlands received more than 1 acre AF/A of return or drain flow. Once the water was transferred to the wetlands, those inflows cease. Under the current transfer to wetlands of 2.99 AF/A, 1 AF/A goes to make up the loss of drain-water inflow, leaving only 1.99 AP/A of additional water to maintain wetland habitats. Consequently, the addition of 0.51 AF/A means that the wetlands would receive 25 percent more actual water once the loss of drain-water is made up. This would not result in any addition water diversions by the Project, since prior to the transfer the full-duty was being used by private owners.

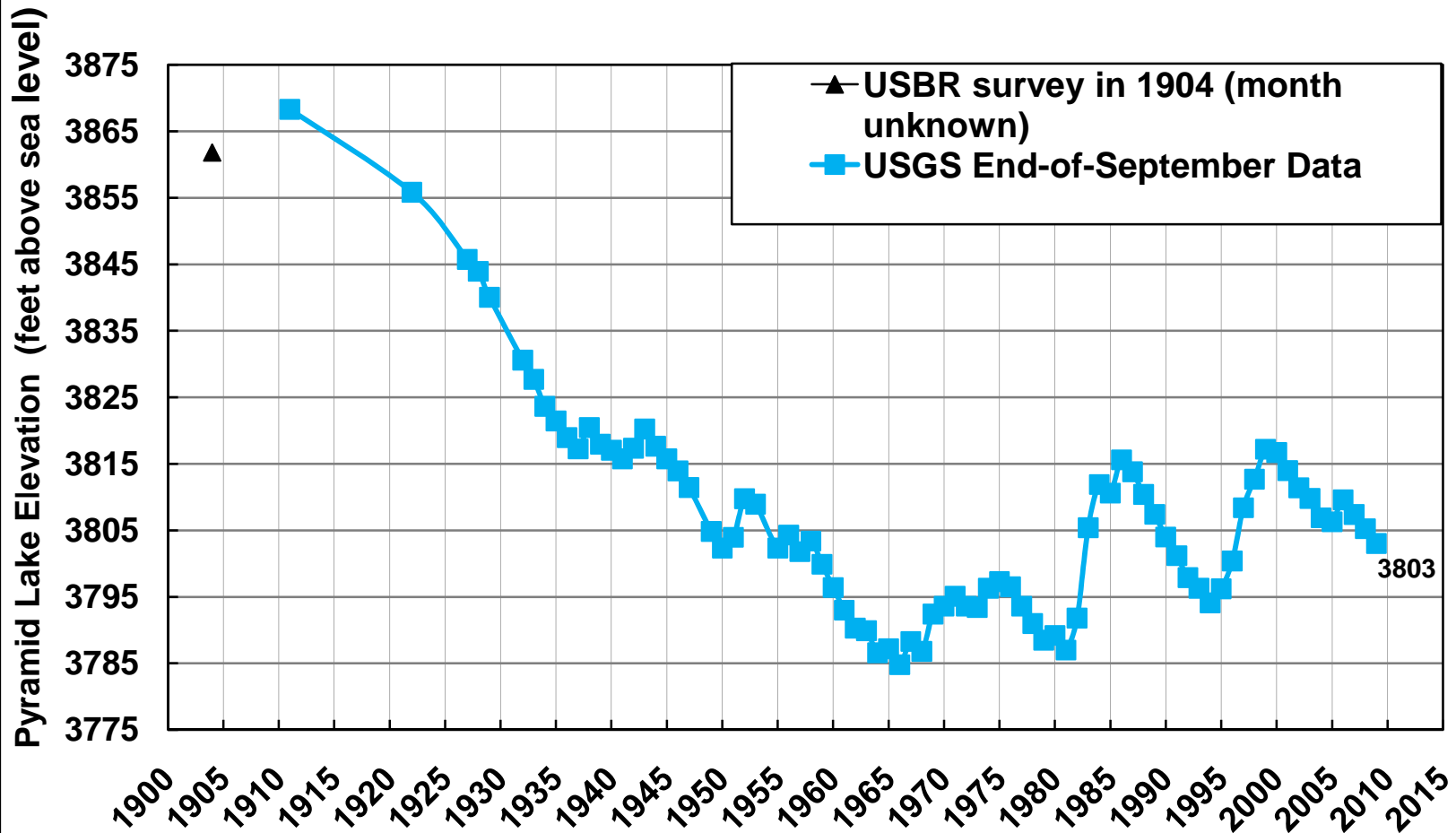
No.	Name	Comment
		<p>[#2-6 Pyramid Lake and cui-ui.] There is still a perception that Pyramid Lake is still in jeopardy of significantly declining and putting the cui-ui in danger of extinction. Nothing could be further from the truth. As the attached graph of Pyramid Lake elevations shows (see pages 3 - 4 for graphs), the lake has continued a long-term trend increase since 1964, when concerns for its survival was elevated. In contrast, wetlands in western Nevada have continued to decline. [#2-7 Study.] A study was also done by the Bureau that show that if nothing more was done to provide more water to Pyramid Lake that the Lake would continue to rise. The Service calculated that between Statehood and the early 1960's that more than 80 percent of the wetlands in western Nevada had been lost. Since that time the losses have continued and during the last 50 years Nevada has not only lost significant un-managed wetlands, but has also lost two State managed wetland areas and one federal National Wildlife Refuge.</p>
		<p>It is therefore my request that the EA be amended to make three provisions to the document. [#2-8 Lahontan Valley wetlands.] The first would stipulate that any active or transferable water rights acquired under this program be transferred to the LVW. [#2-9 Other water rights.] That the provision be made, if it hasn't already been done, that non-active water rights acquired by the State or Service for the wetlands be transferred to this program and count toward the 6,500 acre goal. [#2-10.] And lastly, that before this program is approved for the benefit of the Tribe and Pyramid Lake, that the Tribe agree to stop all current and future protests of full-duty transfers by the Service, State, or NWA for the benefit of the LVW.</p>
3	Rose Strickland Sierra Club	<p>Thank you for your request for review and comments on the Draft Environmental Assessment and Draft Finding of No Significant Impact for the Newlands Project Water Rights Retirement Program). The Sierra Club has concerns about the proposed action and offers suggestions for inclusion in the final EA and FONSI.</p>
		<p>The Sierra Club has been a part of the Lahontan Valley Wetlands Coalition since the late 1980's, sharing its mission of providing water to the wetlands at Stillwater National Wildlife Refuge and Carson Lake. Our volunteers have donated thousands of hours in pursuit of our goal and are appreciative of the progress made by the US Fish and Wildlife Service and the Nevada Department of Wildlife in providing water to Lahontan Valley wetlands.</p>
		<p>[#3-1 Legislation.] The authorizing legislation for the water rights retirement program apparently did not differentiate between active and inactive water rights, although this was the original intent of the state legislation, AB 380. [#3-2 Lahontan Valley wetlands.] BOR's purpose of and need for the proposed action (as stated on pp. 1-2) sets it in direct conflict with federal legislation (PL 101-618) which directed the US Fish and Wildlife Service (USFWS) to acquire water rights for the Lahontan Valley wetlands. Two Department of Interior agencies, the USFWS and the Bureau of Reclamation (BOR), will be competing for the same water in the Newlands Project. The price of limited water could be greatly increased due to competitive bidding between these two federal agencies.</p>
		<p>[#3-3 Other programs purchasing water rights.] We also understand the US Navy is actively purchasing lands and water rights around the Fallon Naval Air Station to secure its mission from encroachment by subdivisions. etc. on the base , thus providing a third federal agency competing for the same limited resource and potentially driving up the cost of available water. This is a most unfortunate situation, as the missions of all three agencies will be undercut by three competing water rights acquisition programs.</p>
		<p>[#3-4 Lahontan Valley wetlands.] We strongly urge the BOR to coordinate with the USFWS and the US Navy to minimize the competition for scarce water rights in the Newlands Project. A cooperative program should be set up, so that the local water market will not benefit from conflicting federal programs.</p>



Page 3

Graph submitted by Norman Saake as part of comments. See #2-6 response to comments and Bureau of Reclamation graph on Page 4.

## Pyramid Lake End of September Elevation 1904 - 2009





<b>No.</b>	<b>Name</b>	<b>Comment</b>
4	Richard Grimes US Fish & Wildlife Service	<p>[#4-1 Lahontan Valley wetlands.] Jane, thank you for the opportunity to review the "Draft Environmental Assessment for the Newlands Project Water Rights Retirement Program." As we've discussed, in the original AB 380 water rights purchase program, we minimized competition between programs by working informally with the Carson Water Subconservancy District and their contractors. In many cases, we were able to find opportunities within our Lahontan Valley water rights purchase program to share transactions with CWSD.</p>
		<p>For example, when we contracted to buy a water-righted tract which included both ineligible and eligible water rights, during the escrow we were able to separate the ineligible water for the AB 380 program and acquire only the water rights eligible for wetlands use. This strategy avoided the perception in the marketplace that we had two competing federal programs for the same property, maximised the water acquired by both programs, minimized acquisition and transaction costs and made sure the property owner received full appraised value for the entire property. I'd like to see that cooperation encouraged in the new phase of the retirement program, perhaps with a short statement in Chapter 2.2 which describes the proposed action.</p>
		<p>[#4-2.] I was also pleased to see that a feature of the new program will be to pay the Truckee-Carson Irrigation District a lump-sum for each acre of water rights retired to offset the loss of future operations and maintenance assessments. As the largest water owner in the Newlands Project, and the largest payer of O&amp;M, it's very important to the Fish and Wildlife Service that this payment continue to be made to the district.</p>
5	Stuart Richardson Newlands Water Protective Association, Inc.	<p>The Newlands Water Protective Association, Inc., (NWPA) a Nevada non-profit corporation whose purpose is to protect and defend the water and hydropower rights of the water rights owners of the Newlands Reclamation Project, respectfully submits the following comments to the Draft EA regarding the Newlands Project Water Rights Retirement Program. NWPA served as a contractor to assist the Carson Water Subconservancy District in implementation of the original AB 380 program.</p>
		<p>[#5-1 Proposed Action.] <i>Section 2.2 Proposed Action.</i> As the entity contracted to assist Great Basin Land and Water (GBLW), the contractor selected to administer the Retirement Program and the Fund for which this EA is written, NWPA is concerned about the accuracy of the description of the Proposed Action under Section 2.2 of the EA, although its concerns and suggested changes would not affect the ultimate goal of the program, that is, the retirement of water right.</p>
		<p>[#5-1 continued.] As NWPA understands this program, no acquisitions of water rights are contemplated. The program was designed that way to streamline the process based on lessons learned in the AB 380 program. This program has been designed to pay water right owners to voluntarily retire their water rights. At no time would the water rights change ownership. Any water rights retired into the program that remain subject to litigation would be dismissed from that litigation. The irrigation district would be paid the \$1,233 per acre offset for lost operation and maintenance revenues. If NWPA's understanding of the program is accurate, then, the language of Section 2.2 may need to be amended to reflect an accurate description of the program.</p>

No.	Name	Comment
		<p><b>[#5-2 Affected Environment and Environmental Consequences.]</b> Under Section 3, Affected Environment and Environmental Consequences, found on page 9, and specifically referencing Table 1 found on page 11, footnote 1 explains that the Current Condition as reflected excludes 9,429 water righted acres alleged to be under current litigation. While this was certainly the case at the time of preparation of the EA for the AB 380 program, it is not necessarily true today. All administrative challenges pending against Newlands Project Water Rights change applications have been fully resolved, and by Court Order entered in March of 2008, the Federal District Court dismissed, without prejudice, any petition challenges against individuals who did not acknowledge receipt of service in the case or who own property, even if acknowledgment of receipt had been submitted, that is now under different ownership. While the Pyramid Lake Paiute Tribe of Indians is certainly free to ask the Court to certify the orders in order to pursue interlocutory appeal on the issues, or, in the alternative, to file a new action against the water right owners, they have not yet done so. Until an appeal is filed or another court order to the contrary entered, the ruling stands. The actual current condition, then, according to NWPAs calculations, is a total of 221 acres (based on the Tribe's database, 137.33 according to NWPAs database) still remaining challenged by litigation. Certainly far different from the 9,429 acres utilized in the prior EA. Likewise, footnote 2 on page 11 may need to be changed as well, based upon the 221 acres currently remaining subject to litigation challenge. Whether these numbers will actually change the modeling results, NWPAs does not know. Our primary concern is to ensure accuracy of the EA.</p>
		<p><b>[#5-3 Truckee Canal.]</b> <i>Modeling.</i> It is unclear to NWPAs whether the modeling calculations in this EA were done taking into account the restrictions on diversions placed by the Court as a result of the canal breach. Again, the EA for AB 380 did not contemplate a mandatory operational restriction that adversely affects the amount of water available to serve remaining water right owners in the project, or the impact to wildlife at the Stillwater Wildlife Refuge and Lahontan Reservoir. <b>[#5-4 Fallon Naval Air Station and national security.]</b> Furthermore, NWPAs is unsure if the original EA, or the instant document, takes into consideration impacts to the Fallon Naval Air Station and national security.</p>
		<p><b>[#5-5 Temporary water transfers.]</b> Additionally, no one contemplated, at the time of the EA for the AB 380 program, that the City of Fernley would be temporarily transferring its water to Pyramid Lake on an annual basis, thus increasing the amount of water delivered to Pyramid Lake by over 6,000 acre feet per year. Has revised modeling using this additional information, that is, the reduction in canal capacity and conversion of previously irrigated water rights to wildlife purposes at Pyramid Lake, been done? Section 3.4.2 Environmental Consequences refers to a finding in the prior EA that the surface elevation at Pyramid Lake would likely increase by 2.1 feet based on circumstances in existence at that time. Modeling current circumstances should, then, result in even greater benefit to Pyramid Lake due to reduced diversions at Derby Dam and increased deliveries to Pyramid Lake.</p>
		<p><b>[#5-6 Other water rights.]</b> <i>Finding of No Significant Impact.</i> NWPAs agrees that the retirement of the limited amount of water rights contemplated by the new program as indicated in the EA will not result in significant impact, particularly in light of the fact that the original EA contemplated acquiring 6,500 acres. It should be noted, however, that according to NWPAs records, in addition to the AB 380 retirements totaling 4,623.54 acres, 41.19 acres has been declared abandoned or forfeited through settlement negotiations since the end of the AB 380 program, thus bringing the total to 4,664.73 acres that have been voluntarily permanently retired, or have been declared abandoned or forfeited by the Federal District Court. NWPAs suggests the actual number be identified and agreed to by all parties prior to the commencement of this program.</p>



No.	Name	Comment
		<p><b>[#5-7 Other water rights.]</b> <i>General Program Comments.</i> In the prior EA for the AB 380 program, NWPAA went on record as being uncertain that 6,500 acres was an attainable goal, as it was an arbitrary number reached during negotiations of the language of AB 380 and the Joint Testimony Agreement. According to NWPAA records, however, the U. S. Fish and Wildlife Service owns 571.24 acres of water rights that could, with congressionally granted authority, participate in this program. Likewise, the Pyramid Lake Paiute Tribe, has about 48.51 acres it has not converted to environmental purposes and Reno, Sparks and Washoe County has 51.52 acres they have not moved to wildlife purposes. These water rights could also participate in the program. These water rights are just sitting unused. The water is not diverted at Derby but flows down for the benefit of Pyramid Lake anyway. If just these three entities were to participate in this retirement program, the total acreage voluntarily retired or declared abandoned or forfeited could be up to 5,336 rather quickly and easily, leaving just 1,164 acres left to reach the 6,500 acre limit. 1,164 acres just might be do-able.</p>
		<p><b>[#5-8.]</b> One last comment. NWPAA is concerned that the water right owners who voluntarily participate in the program will not receive the benefit of resolution of alleged assertions of abandonment, forfeiture or lack of perfection made by the Pyramid Lake Paiute Tribe. The result would be a failure to meet the goals as stated on page 1 under Introduction: "to provide an alternative to time-consuming and costly legal or administrative proceedings concerning challenged water rights" since many of those who may desire to participate in the program are not currently subject to litigation but desire to avoid future litigation. This, of course, is not a subject broached by the EA, but one that must be tackled by the administrators of the program during its existence. NWPAA is hopeful that administrators of the program will work with the Tribe and others to develop a mechanism to ensure against future litigation challenges to specifically identified water rights and to remove the litigation clouds on title to real property in the Newlands Project.</p>
		<p><b>[#5-9.]</b> <i>Conclusion.</i> Resolution of prolonged water rights litigation in the Newlands Reclamation Project is a commendable goal. NWPAA supports all efforts to resolve litigation in a manner that does not adversely affect current accepted water usage by water right owners in the Project. NWPAA believes this program, if administered properly, can go a long way toward achieving resolution of the many outstanding issues plaguing not only the water right owners, but the Pyramid Lake Paiute Tribe and other entities as well.</p>
6	Matthew Dillon State of Nevada Division of Water Resources	<p>Please accept the following as the comments from the Office of the State Engineer, Nevada Division of Water Resources, solicited by the Bureau of Reclamation regarding the <i>Draft Environmental Assessment and Finding of No Significant Impact of the Newlands Project Water Rights Retirement Program</i>. <b>[#6-1 Sharing Program information.]</b> <i>Comments:</i> Information identifying those acreages that participate in the Water Rights Retirement Program (Program) should be periodically made available to all concerned entities, including the Nevada Division of Water Resources. The information is necessary for proper processing of <i>APPLICATIONS FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER AND PLACE OF USE OF THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED</i> filed with the State Engineer. At the conclusion of the Program, a complete dataset of the retired acreage should be made available in both tabular and Geographic Information Systems (GIS) format.</p>
		<p><b>[#6-2.]</b> NRS 533.325 Application to State Engineer for permit. Any person who wishes to appropriate any of the public waters, or to change the place of diversion, manner of use or place of use of water already appropriated, shall, before performing any work in connection with such appropriation, change in place of diversion or change in manner or place of use, apply to the State Engineer for a permit to do so.</p>

No.	Name	Comment
7	Rusty D Jardine Deputy District Attorney, Churchill County	<b>[#7-1 Request for extension of comment period.]</b> On behalf of Churchill County, Nevada we are in receipt of the letter dated June 10, 2010 regarding the Environmental Assessment and Draft Findings of No Significant Impact for Newlands Project Water Rights Retirement Program. The date of action for this matter is June 25, 2010. Owing to the short period of time in which to prepare, we hereby respectfully request an addition fourteen (14) days to submit comments as pertaining to the above captioned matter.
8	Kathryn Rutan Truckee Carson Irrigation District	<b>[#8-1 Request for extension of comment period.]</b> Thank you for including TCID in the comment period. The 15 day period is very short and consequently our lawyers don't have time to develop a constructive comment. The 15 day period also falls between our normal Board meetings so that I could not agendize the EA or the comments for the Board. I would ask if you could extend the comment period for another 15 days that would be ample time. In any case I would like to express my concerns with the EA.
		<b>[#8-2 Proposed Action.]</b> As stated, the AB 380 program was developed to resolve the litigations involved with the surface water rights in the Newlands Project. I believe that was a good resolution and one would hope that with the Project Water Rights Retirement Program that would be the outcome as well. However, in reading the Draft EA it is clear the Tribe does not share that thought.
		<b>[#8-2 continued.]</b> The Tribe has already reactivated petition cases and is seeking the forfeiture of challenged water rights. It concerns me that The Tribe will now have access to \$10 million to purchase water rights challenged or not over and above the 6,500 acres. The Tribe has made it clear that they want no water to be diverted to the Carson Division from the Truckee Canal and I believe that they will stop at nothing to reach that goal. <b>(#8-3 Water right retirement costs.)</b> This \$13 million is more than the original amount set aside for the 6,500 acres by twice as much. This is a real and legitimate concern for the water right owners in the Carson Division.
		<b>[#8-4 Proposed action.]</b> The draft EA is concise, but it does not address cumulative impacts of retiring over 3000 acres of water rights on the water supply in the Lahontan Valley. <b>(#8-5 Effects on water resources.)</b> It does not address potential impacts of loss of drain water for the wildlife refuges, nor does it address the impact on the community drinking water supply. I believe the funds are there to open the door for additional environmental and community impacts. Those are my comments but I know our lawyers would like the extra time to respond as well.
9	R. Tietje Nevada State Clearing house	<b>[#9-1.]</b> The State Clearinghouse has processed the proposal and has no comment. This constitutes the State Clearinghouse review of this proposal as per Executive Order 12372.
10	Michael J. Van Zandt Hanson Bridgett LLP	<b>[#10-1 Water right retirement.]</b> On behalf of the Truckee-Carson Irrigation District, I am submitting comments on the subject documents. TCID believes that because the EA encompasses not only the \$3,000,000 for acquisition of water rights, but also an additional \$10,000,000 for acquisition of water rights, that the EA and the FONSI understate the potential effects of the proposed action. The EA fails to take a "hard look" at the potential impacts from this program on the affected environment. TCID believes that the cumulative effects of the proposal will have a significant adverse effect on the environment and that a full environmental impact statement is required.

No.	Name	Comment
		<p><b>[#10-2 Use of existing NEPA analysis.]</b> AB 380 Environmental Assessment (2000): The current EA attempts to incorporate by reference the year 2000 EA that was accomplished on the original AB 380 program. The analysis in the AS 380 EA was based on data that was out of date at the time and is now over ten years older. <b>[#10-3 Data available for use in analysis.]</b> Moreover, there has been sufficient time passed to allow for the BOR to analyze the impacts of the AB 380 program on the environment, including on Fernley and the Lahontan Valley by updating the information analyzed in the AB 380 EA. In other words, the BOR should use more recent data on the environmental setting to determine if the original acquisition program, along with all the other acquisition programs has caused any environmental impacts in the study area. <b>[#10-4 Proposed action.]</b> The use of the old data masks the potential exacerbating effect on the environment from the new acquisition program, which theoretically could reduce the number of irrigated acres in the Newlands Project by over 3000 acres.</p>
		<p><b>[#10-5 Modeling.]</b> The AB 380 EA also uses the Truckee River Operating Model (TROM) for its analysis of water deliveries to Pyramid lake and the Newlands Project. The TROM has long been recognized by the BOR to be outdated and inadequately documented. The TROM has been described by various modelers from the USGS and elsewhere as a lacking any valid scientific basis and fatally flawed for its use as an evaluation tool. See Written Testimony of Willem Schreuder, Ph.D., Principia Mathematica, June 29, 2010. Attachment 1. Therefore, use of the TROM for an analysis of the impacts of the new acquisition program are likewise fatally flawed.</p>
		<p><b>[#10-6 Cumulative effects.]</b> The AB 380 EA also states that it will analyze the potential impacts of the proposed Truckee River Operating Agreement (TROA) on the AB 380 program, but then concludes that the TROA is not yet finalized and therefore its impacts are unknown. The current EA purports to analyze the cumulative impacts from TROA, but merely makes a conclusory statement that the cumulative effects from TROA "is expected to result in potential effects of relatively small magnitude." There is no analysis associated with the TROA comment and not even an indication as to which environmental resources were evaluated for impacts. Given the fact that it is anticipated that TROA will cause shortages in the Newlands Project due to the management of Truckee River water in upstream reservoirs, and the fact that this proposal will further reduce irrigated acreage in the Newlands Project, it is unsupported in the EA as to cumulative impacts from TROA on water supply, groundwater recharge, air quality, and water quality. Further, there will be additional significant impacts on the Stillwater National Wildlife Refuge and the Carson Lake Refuge through the reduction in water deliveries and an attendant reduction in drain water that benefits these areas and their wildlife.</p>

No.	Name	Comment
		<p><b>[#10-7 Estimates of water rights that may be retired.]</b> Draft Environmental Assessment for Newlands Project Water Rights Retirement Program 1. Scope The Draft EA purports to analyze the acquisition of \$ 3,000,000 worth of additional water righted acres in the Newlands Project without attempting to quantify how many acres are at stake. At \$4000 per acre, an average value for the Newlands Project, the proposed program could acquire up to 750 acres of additional land. This equates to 2625 acre feet at 3.5 acre feet per acre or 3375 acre feet at 4.5 acre feet per acre. Suffice it to say that the total amount of acre feet will most likely surpass 3000 acre feet. However, the EA also purports to analyze the potential impacts from an additional \$10,000,000 acquisition program. The EA does not attempt to quantify how many acres this would impact. However, using the \$4000 figure, another 2500 acres of water righted land could be retired under the program. This amounts to 11,250 acre feet at 4.5 acre feet per acre and 8,750 acre feet at 3.5 acre feet per acre. The EA does not calculate these numbers but leaves it to speculation as to the actual numbers.</p> <p><b>[#10-8 Proposed action.]</b> If one adds the two programs together, 3250 acres of land could be retired as a result of this proposal. This amounts to more than five percent of the irrigated lands in the Newlands Project each year. When combined with the more than 5000 acres already retired through various programs, the total impact on the Project exceeds fourteen percent of the irrigated lands. This percentage of lands being retired amounts to over 30,000 acre feet of delivered water each year in the Project. There is no analysis of these numbers in the EA and no attempt to give either the public or the decision maker an idea of the magnitude of the potential size of the reduction. Thus, the EA tends to understate the potential environmental impacts from the proposed action because it fails to quantify the true magnitude of the acreage retirement program.</p> <p><b>[#10-9 Proposed Action.]</b> 1 The EA purports to limit the total number of acres to 6500; however, given the availability of the \$10,000,000, the lack of any limitation in the authorizing legislation, and the motivation of the Pyramid Lake Tribe to retire the maximum number of acres, there is no guarantee that the 6500 number will not be exceeded.</p>
		<p><b>[#10-10 Affected Environment and Environmental Consequences.]</b> 2. Alternatives A. No Action: The EA assumes that the Tribe will be successful in retiring 60 percent of the lands that it has challenged in the Tribe's Petition cases. The success rate for the Tribe in the companion Transfer cases was much less than 60 percent. Moreover, the Federal District Court in Reno has dismissed all but about 60 of the petitions that Tribe originally filed in 1993. The Tribe disobeyed the Court's order to personally serve some 1700 water right owners in the original Petition action, failed to file a lis pendens and prejudiced a number of water right owners who have already reconveyed their water rights to other persons or entities. The lack of service and notice to the water right owners was deemed to be a due process violation by the Tribe and all but about 60 of the petitions have been dismissed. The court now lacks jurisdiction over these water rights for purposes of the Tribe's claims. The Tribe has not appealed this ruling. Thus, the EA overstates the risk of the Tribe pursuing its actions and the purported justification for the proposed action.</p>
		<p><b>[#10-11 Estimates of water rights that may be retired.]</b> B. Proposed Action: As noted above, the proposed action does not include any quantification of the numbers of acres that could be retired through the \$13,000,000 acquisition program, nor does it attempt to quantify the total amount of water that will not be delivered or diverted to the Newlands project as a result of the proposal. Thus, neither the public nor the decision maker are sufficiently informed of the magnitude of the proposal to make any informed decisions or informed comments.</p>

No.	Name	Comment
		<p><b>[#10-12 Use of existing NEPA analysis.]</b> 3. Affected Environment and Environmental Consequences A. Background: The EA incorporates by reference the year 2000 AB 380 EA. Not only has ten years passed since this EA was prepared, but even the 2000 AB 380 EA used outdated material. <b>[#10-13 Modeling.]</b> Most notably, the AB 380 EA used the TROM, which has been severely criticized by the USGS and the independent consultants hired by the BOR. The BOR is obligated to use the best available science in conducting its evaluations. The TROM is fatally flawed according to the USGS; therefore, it cannot be the basis of any analysis of water resource impacts for this proposal. <b>[#10-14 Affected Environment and Environmental Consequences.]</b> It also appears from Table 1 of the EA that the Proposed Action will reduce the number of adult female Cui-ui from 605,700 to 392,200. That much of a take clearly violates the Endangered Species Act.</p>
		<p><b>[#10-15 Cumulative effects.]</b> Moreover, the EA fails to acknowledge active water rights appropriations by the BOR and TCID. The BOR is currently asking for an additional 120,000 acre feet of water from the Truckee River watershed. TCID has an outstanding application for 100,000 acre feet from the Truckee River with a priority of 1930. The EA fails to address these applications and their potential impact on the Truckee River water supply.</p>
		<p><b>[#10-16 Use of existing NEPA analysis.]</b> B. Wildlife and Endangered, Threatened, Candidate Species. The EA makes modifications to several species status; however, it does not give an update on any of the species in Pyramid Lake, specifically the Cui-ui and the Lahontan Cutthroat Trout. These are the species of interest that are driving the acquisition program. Since it has been ten years since the original EA, the BOR and the U.S. Fish and Wildlife Service must have some information on the continuing viability of these species and how the additional water will affect them. The EA continues to use outdated data and this misrepresents the status of the species and the impact of the prior acquisition programs.</p>
		<p><b>[#10-17 Affected Environment and Environmental Consequences.]</b> The EA purports to conclude that there will be benefits from the program on Pyramid Lake without providing any actual data. What for example, is the correlation between inflows to Pyramid Lake from the proposed action and increases in the fish population. <b>[#10-18 Affected Environment and Environmental Consequences.]</b> Are the rewards of the program outweighed by potential impacts to the population of people in the Newlands Project? <b>[#10-19 Affected Environment and Environmental Consequences.]</b> Will the affected environment be impacted if only a small fraction of the water rights are acquired? <b>[#10-20 Pyramid Lake.]</b> What trends are there in the sustainability of Pyramid Lake, given its status as a terminal desert lake?</p>
		<p><b>[#10-21 Affected Environment and Environmental Consequences.]</b> C. Newlands Project: TCID is most concerned about the potential impact of the proposed action on the Newlands Project. The potential reduction of water supplies to the Project has a dramatic and immediate impact on the surrounding environment. Here are some examples. As water rights are acquired and land is dried up, there are created more and more areas that lack vegetation in the Project. Not only is valuable soil washed away and blown away, but the soil particles become airborne and create dust bowls and dust clouds. The AB 380 EA concludes that the particulate loading meets air quality criteria; however, particulate standards have been modified since 2000 and the EA fails to state what the new standards are and whether the area is in compliance. Moreover, the EA fails to quantify the additional loading of 3250 new barren acres on air quality. The EA fails to take a hard look at this issue.</p>



No.	Name	Comment
		<p><b>[#10-22 Affected Environment and Environmental Consequences.]</b> Given all the land that have had their water rights retired, the EA fails to evaluate or even mention the aesthetic impacts on the environment. The area immediately to the west of the Stillwater national Wildlife Refuge was a continuous greenbelt oasis of alfalfa field, and in the case of the Canvasback Duck Club of marshes and wildfowl habitat. Now those lands are being dried up. Not only does the reduction in water righted acreage affect the irrigated lands, but it also affects the amount of drain water that reaches the marshes around Carson lake, Stillwater Refuge and the Canvasback Club. There is an attendant impact on wildfowl and wetlands that the EA fails completely to address. This proposed action is exacerbating an environmental disaster on the eastern side of the Newlands Project. There is no analysis of the impacts on the aesthetics of the valley, and even more alarming, no analysis of the impacts on wetlands and wildfowl.</p>
		<p><b>[#10-23 Affected Environment and Environmental Consequences.]</b> Besides the impact on air quality, the EA fails to analyze impacts on groundwater supply. The City of Fernley is experiencing reductions in its groundwater supply that feeds its wells for domestic water production. There is no doubt that the groundwater recharge in the Fernley area is directly related to the amount of water that is placed in irrigation in the Truckee Division. The EA fails to evaluate this issue, or even to discuss the groundwater recharge situation.</p> <p>Likewise, in the Lahontan Valley, the vast majority of citizens rely on shallow wells for their water supply. Many of these wells are less than 100 feet in depth. These people rely on the shallow aquifer for their domestic supply of water. This aquifer is recharged almost exclusively from irrigation waters applied to crops. The cumulative impact of withdrawing over 40,000 acre feet on an annual basis from the valley and the aquifer is not even mentioned let alone analyzed in the EA. The EA fails to take a hard look at these issues without an adequate water supply, housing in the Fernley and Fallon areas cannot expand. This will have an adverse impact on industry and domestic uses and may slow or prevent growth in the communities.</p>
		<p><b>[#10-24 Climate change.]</b> D. Cumulative Impacts: Besides the failures noted above, the EA fails to address any issues' regarding increased Green House Gasses, Global Warming, or Climate Change due to the reduction in the amount of water delivered to the Newlands Project.</p>
		<p><b>[#10-25 Cumulative effects.]</b> The EA purports to dismiss the TROA in its cumulative impacts analysis. However, the TROA, if implemented, will cause additional shortages in the project. In some years these shortages could exceed 30,000 acre feet. Add to this the 40,000 acre feet of additional acquisitions and you have over 70,000 acre feet of water being removed from the system. No impact analysis of this reduction has been accomplished. The EA tries to mask these impacts by claiming they are speculative; however, there is an existing EIS for TROA that reveals the shortages. There is no analysis except some scanty conclusions regarding cumulative impacts from TROA.</p>
		<p><b>[#10-26 Affected Environment and Environmental Consequences.]</b> The conversion of agriculture lands to urban uses has slowed considerably in recent years. The acquisition program will put pressure on farmers to sell water rights but there will be no conversion to urban uses, The result will be vacant land that will be part of the growing dust. bowl, with the attendant impacts on air quality and aesthetics.</p>
		<p><b>[#10-27 Cumulative effects.]</b> The Recoupment lawsuit is mentioned as a potential cumulative impact if more water is taken from the Newlands Project. The current status of the lawsuit is that it is on appeal, and the case has not been reactivated in the federal district court. Nonetheless, there is no analysis of the worst case if the total amount of water the United States expects to recoup must be repaid over time. This can be quantified by the government and analyzed as cumulative impacts on shortages caused to the project. The EA fails to analyze this issue at all.</p>



<b>No.</b>	<b>Name</b>	<b>Comment</b>
		<b>[#10-28 FONSI.]</b> 4. Conclusion: The EA fails to take a hard look at all of the issues discussed above. For these reasons, the EA is defective and has masked the true impacts. The FONSI and the EA are defective and the BOR should prepare an environmental impact statement for this proposed action. TCID wishes to be copied on the final EA and FONSI as well as this law firm.

Reclamation Response to Comments  
Newlands Project Water Rights Retirement Program – Environmental Assessment

[#1-1.] The comment does not pertain to, or raise environmental issues related to the environmental assessment. Comments not related to environmental issues may be considered by the decision-maker during project deliberations; however, written responses to such comments are not required by NEPA.

[#2-1.] The United States was not a signatory to the Joint Testimony that developed the 6,500 acre target for water rights retirement in the Newlands Project. Reclamation has no comment on the status of surface water rights acquired by other agencies and organizations, and their possible relationship to the goal of retiring 6,500 acres of surface water rights as described in A.B. 380 and the Joint Testimony. The participants who created the Joint Testimony may be able to address the status of the water rights referenced by the commenter. Owners of other water rights may apply to the Retirement Program if they are interested.

[#2-2.] The Proposed Action has been modified to show that Great Basin Land & Water would work cooperatively with the U.S Fish & Wildlife Service (FWS) to minimize competition between the Newlands Project Water Rights Retirement Program and the FWS Water Rights Acquisition Program for Lahontan Valley Wetlands.

[#2-3.] The comment does not pertain to, or raise environmental issues related to the environmental assessment. Comments not related to environmental issues may be considered by the decision-maker during project deliberations; however, written responses to such comments are not required by NEPA.

[#2-4.] The Proposed Action has been modified to show that Great Basin Land & Water would work cooperatively with the U.S Fish & Wildlife Service (FWS) to minimize competition between the Newlands Project Water Rights Retirement Program and the FWS Water Rights Acquisition Program for Lahontan Valley Wetlands.

[#2-5.] The comment does not pertain to, or raise environmental issues related to the environmental assessment. Comments not related to environmental issues may be considered by the decision-maker during project deliberations; however, written responses to such comments are not required by NEPA.

[#2-6.] The commenter's graph on page 3 ends with 2006 data. Reclamation's graph on page 4 adds data for the period 2007-2009, which shows a drop in Pyramid Lake water elevation during that period. Since the Operating Criteria and Procedures (OCAP) for the Newlands Project was implemented in 1967, the trend has been an increase in water to Pyramid Lake, but additional inflows are still highly influenced by low precipitation years. The cui-ui is listed under the Endangered Species Act as an endangered species.

[#2-7.] The commenter provides no direct reference to a specific study and Reclamation therefore cannot respond.

[#2-8.] The Proposed Action has been modified to show that Great Basin Land & Water would work cooperatively with the U.S Fish & Wildlife Service (FWS) to minimize competition between the Newlands Project Water Rights Retirement Program and the FWS Water Rights Acquisition Program for Lahontan Valley Wetlands.

[#2-9.] The United States was not a signatory to the Joint Testimony that developed the 6,500 acre target for water rights retirement in the Newlands Project. Reclamation has no comment on the status of surface water rights acquired by other agencies and organizations, and their possible relationship to the goal of retiring 6,500 acres of surface water rights as described in A.B. 380 and the Joint Testimony. The participants who created the Joint Testimony may be able to address the status of the water rights referenced by the commenter. Owners of other water rights may apply to the Retirement Program if they are interested.

[#2-10.] The comment does not pertain to, or raise environmental issues related to the environmental assessment. Comments not related to environmental issues may be considered by the decision-maker during project deliberations; however, written responses to such comments are not required by NEPA.

[#3-1.] The Public Laws referenced in 'Section 1.2.3 Authority' for the Newlands Project Water Rights Retirement Program did not differentiate between active and inactive water rights; the legislation directed that water rights in the Newlands Project be retired.

[#3-2.] The Proposed Action has been modified to show that Great Basin Land & Water would work cooperatively with the U.S Fish & Wildlife Service (FWS) to minimize competition between the Newlands Project Water Rights Retirement Program and the FWS Water Rights Acquisition Program for Lahontan Valley Wetlands.

[#3-3.] Churchill County, Nevada has stated that they are purchasing conservation easements to retain agricultural values and open space, and to promote land development in areas that the county has determined are best suited to that purpose. Under the conservation easement, the water rights are an integral part of the agricultural use of the land and remain with the property. The Fallon Naval Air Station has stated that their program does not address any water right issues on agricultural properties; the Navy's program offers to purchase restrictive use easements which restrict future construction on properties that are enrolled in the county's transfer of development rights program. Therefore, there is no known competition anticipated between the proposed Newlands Project Water Rights Retirement Program and the Navy's program for encroachment control.

[#3-4.] The Proposed Action has been modified to show that Great Basin Land & Water would work cooperatively with the U.S Fish & Wildlife Service (FWS) to minimize competition between the Newlands Project Water Rights Retirement Program and the FWS Water Rights Acquisition Program for Lahontan Valley Wetlands. See also 3-3, there is no known competition anticipated between the proposed Newlands Project Water Rights Retirement Program and the Navy's program for encroachment control.

[#4-1.] The Proposed Action has been modified to show that Great Basin Land & Water would work cooperatively with the U.S Fish & Wildlife Service (FWS) to minimize competition between the Newlands Project Water Rights Retirement Program and the FWS Water Rights Acquisition Program for Lahontan Valley Wetlands.

[#4-2.] The comment does not pertain to, or raise environmental issues related to the environmental assessment. Comments not related to environmental issues may be considered by the decision-maker during project deliberations; however, written responses to such comments are not required by NEPA.

[#5-1.] The EA has been edited throughout to clarify that the water right owners who participate in the Newlands Project Water Rights Retirement Program will retire their water rights and that at no time would the water rights change ownership.

[#5-2.] Footnote 1 has been changed to note that these acres are challenged by the Tribe, and may include some acres previously retired by the A.B. 380 Program. Footnote 2 has been changed to assume that the Tribe prevails in 60% of water rights litigation in the Newlands Project.

[#5-3.] Section 3.5.2 of the EA was expanded to include more information on water delivery issues following the Truckee Canal breach. Reclamation has concluded that the restricted flow regime would not affect the conclusions made in the 2000 EA for the AB 380 Program based on the model results.

[#5-4.] Section 3.11 Cumulative Effects in the EA has been modified and the Churchill County and Fallon Naval Air Station (NAS) conservation and restrictive use easement programs have been addressed. Section 3.7 Air Quality has been modified to address the NAS. Reclamation is unsure of the nature of the national security concerns intended by the commenter, but has addressed the issue under air quality.

[#5-5.] The City of Fernley completed the water transfer to Pyramid Lake in 2009. This event may or may not occur again in the future and as it cannot be forecasted, it should not be modeled.

[#5-6.] The United States was not a signatory to the Joint Testimony that developed the 6,500 acre target for water rights retirement in the Newlands Project. Reclamation has no comment on the status of surface water rights subject to court proceedings and their possible relationship to the goal of retiring 6,500 acres of surface water rights as described in A.B. 380 and the Joint Testimony. The participants who created the Joint Testimony may be able to address the status of the water rights referenced by the commenter.

[#5-7.] Only water rights within the Newlands Project can be retired under the Retirement Program. The United States was not a signatory to the Joint Testimony that developed the 6,500 acre target for water rights retirement in the Newlands Project. Reclamation has no comment on the status of surface water rights held by other agencies and organizations, and their possible relationship to the goal of retiring 6,500 acres of surface water rights as described in A.B. 380

and the Joint Testimony. The participants who created the Joint Testimony may be able to address the status of the water rights referenced by the commenter. Owners of other water rights may apply to the Retirement Program if they are interested.

[#5-8.] The United States was not a signatory to the Joint Testimony that developed commitments and agreements later incorporated into the A.B. 380 legislation. The Retirement Program administrator is tasked with implementing water rights retirement in the Newlands Project not to exceed 6,500 acres, including those water rights previously retired by the A.B. 380 Program. The Retirement Program administrator will not address future litigation challenges concerning the Tribe. The parties who created the Joint Testimony may be able to address the legal issues referenced by the commenter.

[#5-9.] The comment does not pertain to, or raise environmental issues related to the environmental assessment. Comments not related to environmental issues may be considered by the decision-maker during project deliberations; however, written responses to such comments are not required by NEPA.

[#6-1.] Information identifying those acreages that participate in the Newlands Project Water Rights Retirement Program will be made available by Great Basin Land and Water to all concerned entities, including the Nevada Division of Water Resources. At the conclusion of the Program, a complete dataset of the retired acreage will be made available in both tabular and Geographic Information Systems (GIS) format.

[#6-2.] Statement of Nevada State Engineer authority. The comment does not pertain to, or raise environmental issues related to the environmental assessment. Comments not related to environmental issues may be considered by the decision-maker during project deliberations; however, written responses to such comments are not required by NEPA.

[#7-1.] Reclamation extended the comment period by 14 days to July 9, 2010.

[#8-1.] Reclamation extended the comment period by 14 days to July 9, 2010.

[#8-2.] The Proposed Action has been modified to clarify that additional federal funds in an amount up to \$10 million from Desert Terminal Lake legislation would be a Reclamation grant conveyed to the Pyramid Lake Paiute Tribe to administer the second phase of the Retirement Program.

[#8-3.] The Carson Water Subconservancy District's (CWSD) AB 380 Final Report states that \$14,020,654 was received by the program. The CWSD report also notes that, "After the first appraisal was completed, it was clear that additional funds would be necessary to purchase the entire 6,500 acres." The A.B. 380 Program acquired 4,623 acres of water rights before the program funding was exhausted. Transaction costs for water rights retirement have increased since the completion of the A.B. 380 Program.

[#8-4.] The Retirement Program will not retire over 3,000 acres of water rights in the Newlands Project. Reclamation's previously authorized action was to fund the A.B. 380 Program to retire 6,500 acres of water rights and 4,623 acres were retired before funding was expended. The Retirement Program proposes to retire up to the 6,500 acres originally analyzed in the 2000 EA for the A.B. 380 Program. Therefore, the maximum number of acres of water rights that could be retired under the Retirement Program is 1,877 acres (difference between 6,500 and 4,623 acres), or less, if additional acres have been retired or abandoned through other methods. The Proposed Action has been changed to clarify that most of the water rights retired under the Retirement Program are expected to be currently unused, similar to the results of the A.B. 380 Program.

[#8-5.] Reclamation's 2000 EA for the A.B. 380 Program analyzed Water Resources for the project area and describes environmental consequences for surface water supply, surface water quality, groundwater supply, and groundwater quality for the Lower Carson River Basin, including the Lahontan Valley wetlands and shallow aquifer used for domestic water supply. The 2000 FONSI concluded that changes were sufficiently small that there are no significant effects to surface or groundwater supply within the analysis area. The 2010 EA for the Retirement Program determined that the 2000 EA for the A.B.380 Program adequately addressed the effects of the alternatives on water resources.

[#9-1.] Part of the review process for NEPA documents with the State of Nevada. No response is required.

[#10-1.] The EA has been edited throughout to clarify that the water right owners who participate in the Newlands Project Water Rights Retirement Program will retire their water rights and that at no time would the water rights change ownership. Therefore, no acquisition of water rights is proposed. Reclamation's Finding of No Significant Impact determined that the proposed federal action will not significantly affect the quality of the human environment, thus an environmental impact statement is not required.

[#10-2.] Department of the Interior regulations (43 CFR Part 46) for the Implementation of the National Environmental Policy Act (NEPA) of 1969, Section 46.120 states that the Responsible Official should use existing analyses, where feasible. The supporting record must include an evaluation of whether new circumstances, new information, changes in the action or its impacts not previously analyzed, warrant new analysis. The 2010 EA for the Retirement Program conducts this analysis of Reclamation's previously authorized project to provide funding to the A.B. 380 Program, and provides updated information, as appropriate. The Council for Environmental Quality regulations state that information of high quality and professional integrity should be used in NEPA documents. Reclamation used information deemed to be of high quality and professional integrity for the analysis contained in the 2000 EA for the A.B. 380 Program.

[#10-3.] Project implementation monitoring was not a component of the A.B. 380 Program and Reclamation has determined that no known monitoring data from the A.B. 380 Program is available for analysis.



[#10-4.] The Retirement Program will not retire over 3,000 acres of water rights in the Newlands Project. Reclamation's previously authorized action was to fund the A.B. 380 Program to retire 6,500 acres of water rights; 4,623 acres were retired before funding was expended. The Retirement Program proposes to retire up to the 6,500 acres originally analyzed in the 2000 EA for the A.B. 380 Program. Therefore, the maximum number of acres of water rights that could be retired under the Retirement Program is 1,876 acres (difference between 6,500 and 4,623 acres), or less, if additional acres have been retired or abandoned through other methods. The Proposed Action has been changed to clarify that most of the water rights retired under the Retirement Program are expected to be currently unused, similar to the results of the A.B. 380 Program.

[#10-5.] The analysis for the 2000 EA for the A.B. 380 Program used the Below Lahontan model which obtains Lahontan Reservoir storage (Truckee Canal inflow) and inflow to Pyramid Lake from the Truckee River Operations Model. The Truckee River Operations Model has been the primary modeling tool used in the Truckee-Carson River system for the past 30 years. Water managers considered the operations model to be the best model and the best analytical tool because it was specific to operations of Truckee and Carson River basin water management facilities, water demands, and schedules. In the past, its use was accepted by all parties for various negotiations and planning studies. The operations model is appropriate for comparative analysis of alternatives as required by NEPA. No other model was available at the time the EA for AB 380 was developed nor is there another model currently available that provides comparable operational capacity or the ready review of simulated results.

[#10-6.] Section 3.11 Cumulative Effects of the EA has been modified to include a summary of analysis related to TROA issues from the 2000 EA for the AB 380 Program.

The water resources available for the exercise of Orr Ditch decree water rights are not affected by TROA. Section 205(a)(2)(D) of P.L. 101- 618 requires that under the agreement negotiated pursuant to section 205(a) (TROA), Truckee River reservoirs are to be operated to "ensure that water is stored in and released from [those reservoirs] to satisfy the exercise of water rights [including those for the Newlands Project] in conformance with the Orr Ditch Decree and Truckee River General Electric Decree..." Section 205(a)(4) of P.L. 101-618 requires TROA to be presented to the Orr Ditch and Truckee River General Electric courts for approval of any modifications to the Orr Ditch decree or Truckee River General Electric decree. In any event, diversions of Truckee River water to the Newlands Project are governed by the Operating Criteria and Procedures for the Newlands Project (OCAP), and OCAP is not affected by TROA. The change if any, in the amount of Truckee River water available for diversion at Derby Diversion Dam would be the consequence of whether upstream water users had fully utilized their senior priority rights. In other words, water which previously has been available for diversion to the Newlands Project resulted from upstream water right holders not fully exercising their water rights. TROA allows for more efficient exercise of those water rights, and, in the future, water right holders will find ways to exercise their valuable rights and put them to use, particularly in dry periods; such future uses of water rights could also occur in the absence of TROA.

Both alternatives considered in the EA for the Retirement Program are anticipated to result in an increase, not decrease, in Newlands Project irrigated acreage. See also response to #8-5 on analysis of water resources.

[#10-7.] The EA's Proposed Action has been modified to provide an estimate of the number of acres of water rights to be retired by the Retirement Program. However, these estimates are subject to change if transaction costs are modified during the course of the program. The commenter allocates all funding to the estimated appraisal value for water rights per acre; however, program costs also include payments to TCID as an offset for lost operating and maintenance revenues, program administrative costs and overhead. The Proposed Action has also been changed to clarify that most of the water rights retired under the program are expected to be currently unused, similar to the results of the A.B. 380 Program.

[#10-8.] The Retirement Program will not retire over 3,000 acres of water rights in the Newlands Project. Reclamation's previously authorized action was to fund the A.B. 380 Program to retire 6,500 acres of water rights and 4,623 acres were retired before funding was expended. The Retirement Program proposes to retire up to the 6,500 acres originally analyzed in the 2000 EA for the A.B. 380 Program. Therefore, the maximum number of acres of water rights that could be retired under the Retirement Program is 1,877 acres (difference between 6,500 and 4,623 acres), or less, if additional acres have been retired or abandoned through other methods.

The Proposed Action has been changed to clarify that most of the water rights retired under the program are expected to be currently unused, similar to the results of the A.B. 380 Program. The estimated long-term effect of implementing the Retirement Program is a slight increase in active irrigated acres in the Newlands Project, as discussed in the 2000 EA for the A.B. 380 Program.

[#10-9.] Reclamation would provide the additional funding through a financial assistance agreement to the Tribe to continue the Retirement Program. The Tribe must comply with provisions in the agreement to retire up to, but not to exceed 6,500 acres of water rights, including those already retired by the A.B. 380 Program.

[#10-10.] Recent court cases do not change the fact that the Pyramid Lake Paiute Tribe continues to challenge some water rights in the Newlands Project. Reclamation has no information to indicate the probable rate of success should be changed for the purpose of this analysis.

[#10-11.] The EA's Proposed Action has been modified to provide an estimate of the number of acres of water rights to be retired by the Retirement Program. However, these estimates are subject to change if transaction costs are modified during the course of the program. The Proposed Action has been changed to clarify that most of the water rights retired under the program are expected to be currently unused, similar to the results of the A.B. 380 Program. The 2000 EA for the AB 380 Program provides an analysis on Newlands Project operations and infrastructure and estimated an increase in irrigated acres from either the No Action or Proposed Action alternatives.

[#10-12.] The Council for Environmental Quality regulations state that information of high quality and professional integrity should be used in NEPA documents. Reclamation used information deemed to be of high quality and professional integrity for the analysis contained in the 2000 EA for the A.B. 380 Program.

[#10-13.] The analysis for the 2000 EA for the A.B. 380 Program used the Below Lahontan model which obtains Lahontan Reservoir storage (Truckee Canal inflow) and inflow to Pyramid Lake from the Truckee River Operations Model. The Truckee River Operations Model has been the primary modeling tool used in the Truckee-Carson River system for the past 30 years. Water managers considered the operations model to be the best model and the best analytical tool because it was specific to operations of Truckee and Carson River basin water management facilities, water demands, and schedules. In the past, its use was accepted by all parties for various negotiations and planning studies. The operations model is appropriate for comparative analysis of alternatives as required by NEPA. No other model was available at the time the 2000 EA for the A.B. 380 Program was developed nor is there another model currently available that provides comparable operational capacity or the ready review of simulated results.

[#10-14.] The No Action alternative represents the conditions reasonably expected to occur in the future without implementing the Proposed Action. The appropriate comparison in Table 1 of the EA for numbers of cui-ui is the difference between No Action and the Proposed Action, which indicates a higher cui-ui population by implementing the Proposed Action. There is no 'take' of cui-ui indicated by the Proposed Action alternative.

[#10-15.] A hearing on the outstanding application by TCID with a priority of 1930 will be held by the State Engineer in October 2010. The additional applications require approval of the California State Water Resources Control Board and any decision based on these applications would be speculative.

The "appropriations" of water which are the subject of the two referenced applications are actually (1) the storage in Stampede Reservoir of an additional 100,000 acre-feet of water from Nevada water rights, when available, which would otherwise flow to Pyramid Lake and which no other party would be entitled to divert, and (2) the elimination of the current release limit on Prosser Creek Reservoir. These "new appropriations" would be subject to all prior rights, and would not interfere with or adversely affect the exercise of any Orr Ditch or Truckee River General Electric decree water rights, consistent with the requirements of section 205(a)(2)(D) of P.L. 101-618.

[#10-16.] Section 3.4 of the EA has been modified to include information on the Recovery Plan objectives for both cui-ui and Lahontan cutthroat trout. These objectives have not yet been met and both species are listed under the Endangered Species Act.

[#10-17.] Section 3.4.2 of the EA was modified to add statements from the 2000 EA for the A.B. 380 Program. Estimates of inflow to Pyramid Lake under the Proposed Action are 4,100 acre feet per year more than under the No Action alternative. The Proposed Action would result in one more spawning year than would occur under the No Action alternative. As a result there would be an estimated 58,600 more adult female cui-ui by the end of the modeling period.

[#10-18.] Effects of the alternatives on Socio-economics were addressed in the 2000 EA for the AB 380 Program. NEPA is intended to disclose effects for the benefit of the decision maker but does not offer a value judgment of those socio-economic effects.

[#10-19.] The Environmental Consequences section of the EA has been modified to discuss short term effects if only some of the water rights acreage is retired.

[#10-20.] See response to comment #2-6 and graph on page 4. Since the Operating Criteria and Procedures (OCAP) for the Newlands Project was implemented in 1967, the trend has been an increase in water to Pyramid Lake but additional inflows are still highly influenced by low precipitation years.

[#10-21.] Section 4.4 of the 2000 EA for the A.B. 380 Program provides the estimated effects of implementing the Proposed Action on surface water supply. Most of the water rights to be retired under the Retirement Program are expected to be currently unused, similar to the results of the A.B. 380 Program. A maximum of 1,877 acres of surface water rights may be retired by the Retirement Program. Sections 3.7 and 4.5 of the 2000 EA for the A.B. 380 Program describe air quality issues. Nevada standards for ambient air have not changed for PM-10 since 2000. The EA has been modified to add PM-2.5, which is a National Ambient Air Quality Standard.

[#10-22.] Reclamation's 2000 EA for the A.B. 380 Program analyzed Water Resources for the project area and describes environmental consequences for surface water supply, surface water quality, groundwater supply, and groundwater quality for the Lower Carson River Basin, including the Lahontan Valley wetlands and shallow aquifer used for domestic water supply. The 2000 FONSI concluded that changes were sufficiently small that there are no significant effects to surface or groundwater supply within the analysis area. The 2010 EA for the Retirement Program determined that the 2000 EA for the A.B.380 Program adequately addressed the effects of the alternatives on water resources and wildlife.

[#10-23.] Reclamation's 2000 EA for the A.B. 380 Program analyzed Water Resources for the project area and describes environmental consequences for surface water supply, surface water quality, groundwater supply, and groundwater quality for the Lower Carson River Basin, including the Lahontan Valley wetlands and shallow aquifer used for domestic water supply. The 2000 FONSI concluded that changes were sufficiently small that there are no significant effects to surface or groundwater supply within the analysis area. The 2010 EA for the Retirement Program has been modified in Section 3.11 to include statements on the effect of TROA on groundwater. Otherwise, it was determined that the 2000 EA for the A.B.380 Program adequately addressed the effects of the alternatives on water resources.

[#10-24.] Section 3.7 of the EA has been modified to include a discussion on climate change and greenhouse gases.

[#10-25.] Section 3.11 Cumulative Effects of the EA has been modified to include a summary of analysis related to TROA issues from the 2000 EA for the AB 380 Program.

The water resources available for the exercise of *Orr Ditch* decree water rights are not affected by TROA. Section 205(a)(2)(D) of P.L. 101- 618 requires that under the agreement negotiated pursuant to section 205(a) (TROA), Truckee River reservoirs are to be operated to “ensure that water is stored in and released from [those reservoirs] to satisfy the exercise of water rights [including those for the Newlands Project] in conformance with the *Orr Ditch* Decree and Truckee River General Electric Decree...” Section 205(a)(4) of P.L. 101-618 requires TROA to be presented to the *Orr Ditch* and *Truckee River General Electric* courts for approval of any

modifications to the *Orr Ditch* decree or *Truckee River General Electric* decree. In any event, diversions of Truckee River water to the Newlands Project are governed by the Operating Criteria and Procedures for the Newlands Project (OCAP), and OCAP is not affected by TROA. The change if any, in the amount of Truckee River water available for diversion at Derby Diversion Dam would be the consequence of whether upstream water users had fully utilized their senior priority rights. In other words, water which previously has been available for diversion to the Newlands Project resulted from upstream water right holders not fully exercising their water rights. TROA allows for more efficient exercise of those water rights, and, in the future, water right holders will find ways to exercise their valuable rights and put them to use, particularly in dry periods; such future uses of water rights could also occur in the absence of TROA.

The Proposed Action has been changed to clarify that most of the water rights retired under the program are expected to be currently unused, similar to the results of the A.B. 380 Program.

[#10-26.] Most of the water rights retired under the Proposed Action are expected to be currently unused, similar to the results of the A.B. 380 Program. Many of these water rights are not used because the land has already been converted from agriculture to urban uses. Owners of water rights would voluntarily participate in the Retirement Program. Effects on air quality are addressed in the EA.

[#10-27.] Section 3.11 Cumulative Effects in the EA was modified to summarize the analysis presented in the 2000 EA for the AB 380 Program on Recoupment.

[#10-28.] Reclamation's Finding of No Significant Impact determined that the proposed federal action will not significantly affect the quality of the human environment, thus an environmental impact statement is not required. Both the commenter and TCID are on the mailing list for the Final EA and FONSI.